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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,

AND INTERNATIONAL LAW

HOUSE JUDICIARY COMMITTEE

INVESTIGATION OF ALLEGED NAZI WAR CRIMINALS

RESIDING IN THE UNITED STATES BY THE

IMMIGRATION AND NATURALIZATION SERVICE,

DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee:

Our testimony today deals with our report dated May 15, 1978, entitled "Widespread Conspiracy to Obstruct Probes of Alleged Nazi War Criminals Not Supported by Available Evidence--Controversy May Continue." Mr. Chairman, your letter dated January 13, 1977, requested this report on whether INS personnel deliberately obstructed active prosecution of alleged Nazi war criminals or engaged in a conspiracy to withhold or quash any information in its possession.

We believe it is unlikely that a widespread conspiracy existed, but we cannot absolutely rule out the possibility of undetected, isolated instances of deliberate obstruction. Our investigation was hindered by the effect of the passage of time on the availability of information and limited access to agencies' records. In any event, the inherent difficulty in establishing the existence of a conspiracy must be recognized.

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To do this review we selected a sample of 111 cases in which INS had received allegations that individuals were Nazi war criminals. In 57 of them allegations had been made before 1973 and in 54 the allegations were made in 1973 or later. The basis for our selection is shown in the appendix to our statement. Also, we sent a listing of the 111 individuals to the FBI, CIA, State Department, and Defense Department, and requested that we be allowed to review any information these agencies may have concerning them.

We reviewed INS case files on 94 individuals. Two of them had been expelled from the country, one by deportation and one by extradition. Probable cases were developed and prosecuted ^{on other individuals} but, for various reasons, the individuals were allowed to remain in this country. However, INS' investigations of most cases before 1973 were deficient or perfunctory. In some cases, no investigation was conducted. The quality of INS investigations has improved since 1973; however, improvements are still needed. There has been one successful prosecution since 1973, which occurred after our report was issued. The possibility exists that some individuals under prosecution now or in the future may never leave the country due to appeals and other procedures available under the law.

The CIA as agreed prepared summaries in lieu of our receiving actual case files on our sample of 111 names. We reviewed the summaries, and the agencies when requested provided original documents appropriately sanitized to remove intelligence sources and methods on any matters which they considered to be significant to the investigation. The summaries included references to

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information originated by other agencies so that we could contact those agencies to obtain the documents if necessary. The agencies' summaries, as agreed, did not contain personal identities, intelligence sources or methods, and other information not related to our inquiry.

The CIA said it had contacted 22 of the 111 individuals on our sample list as sources of information. One decided not to be involved; of the other 21, 7 were paid for information or services provided. The CIA said its contacts with some of them came at a time when there was an acute shortage of intelligence on Soviet intentions and on developments in Eastern Europe.

The FBI as agreed also prepared summaries in lieu of our receiving actual cases. The FBI had information on 47 individuals. It said it had a confidential relationship with two of them, but they were not paid. The Department of State had information on 46 individuals, one of whom was employed as a consultant. The Department of Defense said it had information on 33 individuals, one of whom was provided employment.

At least three of the individuals included on our list had been assisted in entering the United States. The CIA Director used his authority to bring a former senior official of the German Foreign Ministry during the Nazi era into the country. This official was an expert on the Soviet Union. He departed in 1953 and records show that it was not until years later that INS received an allegation that he had been involved in atrocities.

One of the Defense agencies assisted an individual's entry into the United States and provided employment after entry under a Presidential approved program to aid our postwar military research. No known or alleged

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war criminals were to be brought to the United States under this program. In the late 1940s, two Department of State Embassy officials stated in a memorandum that they waived a clearance for an individual and approved his visitor's visa due to the apparent interest in his trip of another Embassy section and of another Federal agency and to the fact the individual was recommended by persons in whom they had confidence. Also, one consular official stated that the other Federal agency had provided funds for the individual's trip to the United States. An Army intelligence agent was responsible for assisting this individual's entry into the United States. Shortly after the individual entered the country, he was arrested and subsequently deported by INS because his entry was found to have been prejudicial since he had advocated and acquiesced in activities contrary to decency in behalf of the Axis countries during World War II.

We realize the involvement of other Federal agencies with individuals under investigation by INS is controversial. However, we found no information in INS files or at other agencies to indicate any of these agencies or others engaged in a conspiracy to withhold or quash any information in their possession or deliberately obstructed active prosecution. But a number of factors--lack of assurances that we have seen all documentation, the inherent difficulty in establishing the existence of a conspiracy, and changes in the political atmosphere--prevent us from being assured as to the validity of this conclusion. However, we believe certain factors, some of which cannot be validated and in some instances are conjecture, ^{Find instances} should be considered in evaluation INS' lack of progress such as:

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--Some cases were not investigated because the individual was deceased or had left the country. Some allegations were flimsy; for example, the allegation may have been that a person only thinks a certain individual was a Nazi with no other details provided. Others were not investigated or the investigation was perfunctory because the allegation originated from Communist countries; for example, in three cases the Department of State precluded INS from obtaining information from Communist countries. Thus, judgments were made in these cases in light of the political atmosphere prevailing during the time in question, and other cases were probably not pursued for the same reason. Also, the judgment of INS and other Federal agencies that these allegations were Communist propaganda may have been valid in view of their experience and the political atmosphere.

--The time interval since the initial processing of most of the cases under question makes it difficult to reconstruct the situation. Unclear memories or the death of some individuals prevented us from determining both the reasons for certain decisions and the type of investigation conducted as well as who should have been and who actually was responsible. In this regard, INS decentralized its operation in the mid-1950s and assigned responsibility for managing caseloads to the field offices. Under this operating procedure, INS headquarters officials generally would not have been aware of allegations of Nazi war crimes. Top officials of INS before 1973 indicated that they had little or no involvement in or knowledge of the allegations. They said that with a few exceptions,

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Nazi war crime allegations were not high priority cases and headquarters officials therefore would not have been advised of them. Under such a procedure it is hard to pinpoint responsibility for many actions. In one or a small number of cases malfeasance would be possible but difficult to determine; in a large number of cases, however, because of the number of people and offices involved, a conspiracy to quash allegations would have been much easier to determine, if it existed.

--Cases were investigated and prosecuted before 1973, but some deportation orders were overturned or legal procedures enabled the individuals to remain in the United States. As a result, investigators may have curtailed or not undertaken ongoing or future investigations because they considered the investigations to be fruitless and therefore considered the pursuit of other types of cases to be more productive.

--INS did know in some cases and may have known in others that information was available at other agencies. Although conjecture, this information may not have been obtained because it related to internal or foreign security matters.

--We did not evaluate the merits of the involvement of the Federal agencies. These agencies informed us that they did not intervene in or obstruct any INS investigation or prosecution of alleged Nazi war criminals. The CIA's reasons for contacts and assistance--that the individuals, the majority of whom were from, and were knowledgeable about activities in, countries under Soviet jurisdiction--appear valid.

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--Federal agencies will provide information to other Federal agencies when such information will not disclose confidential sources. We did not evaluate this policy of the intelligence community or whether providing this type of information would have assisted INS investigative and prosecutive efforts. Information that we reviewed regarding such individuals and information they may have provided as well as the identities of individuals who were employed, have been classified by the individual agencies.

We believe these factors should help clarify some of the controversy about INS' progress over the years in investigating and prosecuting alleged Nazi war criminals residing in the United States, although the overall validity, degree, and interrelationship of the factors is unknown. The truth of the allegation that there was an overt conspiracy by personnel from INS or by INS and other Federal agencies is unlikely.

PROBLEMS ENCOUNTERED

We have no indication that the information provided to us by the various agencies was not accurate and complete. Because of our restricted access to the files, however, we cannot adequately assure the Subcommittee that our findings are complete.

The matter of access to intelligence-type information by the Congress or its agents, such as GAO, is complicated. Executive agencies must be concerned with protecting sensitive information and congressional committees need the information to properly carry out their oversight functions. Thus, the conflict between the need to know and the need to protect

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exists. Therefore, when we began our work in January 1977 an arrangement was needed that accommodated both.

In April 1977, with your assistance Mr. Chairman, we reached an agreement with the agencies whereby INS would screen the appropriate files and cases for third-agency documents and would obtain approval from the third agency, such as the CIA, FBI, and the Departments of Defense and State, to release the documents for our review. However, it was not until August that the majority of the third-agency documents were cleared and provided to us. Also in August, the Department of Justice authorized us, under certain guidelines, access to cases recommended for or under legal proceedings.

Throughout our review, we were concerned with the need to protect the integrity of the appropriate agencies investigative operations. Accordingly, while we believed it was essential that we have access to information in their investigative files, we were willing to do so in such a way that would enable certain information in those files to be protected.

As you know Mr. Chairman and as previously stated, we entered into agreements with the CIA and FBI whereby these agencies prepared summaries in lieu of providing original documents of any file holdings on our sample of 111 names. Also, it was understood by all agencies involved in our review, that since a number of the cases were under current or possible future litigation by the Department of Justice, Department guidance would be obtained in providing available information for our review. This understanding was necessary so that the agencies involved would not in any way prejudice any ongoing litigation by the Department. As part of our agreement with the Department, the contents of our report and this statement were reviewed and

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approved on the basis that its contents would not prejudice any ongoing litigation. In addition, all agencies involved agreed that individuals included in our sample would not be named.

This agreement was made in order that we not prejudice any ongoing litigation and also to protect those individuals against whom allegations either have not been proven or investigations have not been completed. Included in our sample are individuals who died before INS received the allegation about them. INS' investigation ceases when it finds that the individual has died; thus the allegation is neither proved nor disproved.

The above arrangements and agreements appeared reasonable in view of the complicated matter of access to intelligence-type information, and agency officials were cooperative and open in our discussions with them. We believe our approach to this review clearly protected the integrity of all the involved agencies investigative operations. However, due to the constant screening of files, lack of an INS centralized file system or, before 1973, lack of a program concerning alleged Nazi war criminals, and the fact that we had to use CIA and FBI prepared summaries in lieu of receiving actual case files, we do not have the assurance that we have seen the necessary documentation which would have enabled us to make any valid determinations as to the objectives of the Chairman's request.

Mr. Chairman, even considering all of the factors we have stated, different people will undoubtedly interpret the information we developed in different ways, depending on the preconceived notions they already have. Some will be persuaded, as we were, that the existence of a widespread conspiracy was unlikely. Others will probably find cause to

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strengthen their belief that deliberate obstruction did occur. Thus, the publicity, interest, and controversy about INS' lack of progress may continue. The controversy may be further compounded because legal delays, appeals, and other procedures, considered with the age of the individual and potential witnesses make it doubtful that the Government will ever be able to deport many subjects of the allegations.

This concludes my prepared statement. We hope this information will assist the Subcommittee in its oversight of INS activities. We would be pleased to respond to any questions.

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Next 1 Page(s) In Document Exempt

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